



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 52, 78, and 97

[EPA-HQ-OAR-2020-0272; FRL-10024-45-OAR]

RIN 2060-AU84

Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is correcting certain statements in the preamble of the Revised Cross-State Air Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS, which was published as a final rule in the **Federal Register** on April 30, 2021. The preamble describes a provision of the final regulatory text incorrectly by indicating that the provision applies if a satisfactory demonstration is made, when in fact no demonstration is required. This document corrects the preamble to accurately describe the regulatory text provision.

DATES: The effective date of this document is June 29, 2021.

FOR FURTHER INFORMATION CONTACT: David Lifland, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation, at lifland.david@epa.gov or 202-343-9151.

SUPPLEMENTARY INFORMATION:

Background

The Revised CSAPR Update was signed by EPA Administrator Michael Regan on March 15, 2021, was published in the **Federal Register** on April 30, 2021 (86 FR 23054), and has an effective date of June 29, 2021. Among other things, the rule includes provisions at new 40 CFR 97.811(d) recalling a certain number of allowances issued under the CSAPR NO_x Ozone Season Group 2 Trading Program (referred to here as “Group 2 allowances”) equivalent in quantity and

useability to the vintage 2021-2024 Group 2 allowances that EPA had previously recorded in the compliance accounts of sources in states covered by the new CSAPR NO_x Ozone Season Group 3 Trading Program (referred to here as “Group 3 sources”). The recall applies to all Group 3 sources in whose accounts vintage 2021-2024 Group 2 allowances were recorded, including sources that may have already sold the Group 2 allowances or retired. *See generally* 86 FR at 23139-142 and 23201-203.

In response to comments received on the proposal, the regulatory text implementing the recall requirements includes a provision intended to address the possible circumstance where the current owners and operators of a Group 3 source may have obtained ownership and control in a transaction that did not also provide rights to direct the use or transfer of Group 2 allowances recorded in the source’s compliance account. In such a circumstance, the regulatory text at new 40 CFR 97.811(d)(2)(ii)(B) provides that responsibility for complying with the Group 2 allowance recall requirements lies with the most recent former owners and operators of the source before the occurrence of any such transactions. *See* 86 FR at 23201.

Need for Corrections

As published, the preamble text describing the regulatory text provision at new 40 CFR 97.811(d)(2)(ii)(B) includes an incorrect statement. Specifically, at two locations the preamble text states that the provision applies if the occurrence of a qualifying transaction is “demonstrated to EPA’s satisfaction” and further states that the relevant former owners and operators are identified by reference to such demonstrations. *See* 86 FR at 23139, 23142. In fact, as adopted in the final regulatory text, the provision applies whenever a qualifying transaction has occurred, with no need for any specific demonstration. Further, the relevant former owners and operators are identified by reference to such transactions rather than by reference to any demonstrations. In order to avoid any confusion that might be caused by the

incorrect references in the preamble to demonstrations, in this document EPA is revising the preamble text to remove the incorrect references.

No change is being made to the regulatory requirements adopted in the final rule as already reflected in the regulatory text. This correction applies only to the preamble text, and the purpose of the correction is to make the preamble consistent with the existing regulatory language. This change is not to the rule itself and thus does not require the opportunity for notice and comment. Even if this change were considered to be a rule, notice and comment would be unnecessary because this is a minor technical correction that does not substantively alter the regulation. *See* 5 U.S.C. 553(b)(B). This correction will become effective along with the rule on June 29, 2021.

Correction of Publication

In rule document 2021-05705 at 86 FR 23054 in the Federal Register issue of Friday, April 30, 2021, the following corrections are made:

1. On page 23139, in the third column, in lines 3-4, remove “it is demonstrated to EPA’s satisfaction that”, and in lines 19-20, remove “for which such a demonstration is not made” and add in its place “before any such transactions occurred”; and
2. On page 23142, in the first column, in lines 58-59, remove “it is demonstrated to EPA’s satisfaction that”, and in the second column, in lines 5-6, remove “for which such a demonstration is not made” and add in its place “before any such transactions occurred”.

Dated: May 27, 2021.

Joseph Goffman,

Acting Assistant Administrator, Office of Air and Radiation.

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